



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Charley Lockhart
State Treasurer
Austin, Texas

Dear Sir:

Attention of Mr. Wm. A. Harrison

Opinion No. O-1562

Re: Should the cash placed with the State Treasurer through the Board of Insurance Commissioners be deposited in a suspense account in the State Treasury? And related questions.

Your request for an opinion on the questions as are herein stated has been received by this department. Your questions read as follows:

"(1) Should the cash be deposited in a suspense account in the State Treasury?

"(2) If your answer to question 1 is in the affirmative, should the deposit be made in the suspense account of the Board of Insurance Commissioners, or in the suspense account of the State Treasurer?

"(3) If your answer to question 1 is in the negative, then must the State Treasurer hold the cash in the vaults of the State Treasury?"

You refer to Section 6 of Senate Bill No. 135, Acts of the 45th Legislature, which is set out in Vernon's Annotated Civil Statutes under Article 5068-1 and Section 6 of the above mentioned article reads as follows:

"Each association, not already required by existing laws to do so, shall place with the State Treasurer through the Board of Insurance Commissioners a deposit equal to the largest risk assumed on any one life or person, which

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may be in cash or in convertible securities subject to approval by the Board. Such deposit shall be liable for the payment of all judgments against the association, and subject to garnishment after final judgments against the association. When such deposit becomes impounded or depleted it shall at once be replenished by the association, and if not replenished immediately on demand by the Board, the association may be regarded as insolvent and dealt with as hereinafter provided.

"When any association shall desire to state in advertisements, letters, literature or otherwise, that it has made a deposit with the Board as required by law, it must also state in full the purpose of the deposit, the conditions under which it is made, and the exact amount and character thereof."

Article 4388, Vernon's Civil Statutes, reads as follows:

"The State Treasurer shall receive daily from the head of each Department, each of whom is specifically charged with the duty of making same daily, a detailed list of all persons remitting money the status of which is undetermined or which is awaiting the time when it can finally be taken into the Treasury, together with the actual remittances which the Treasurer shall cash and place in his vaults or in legally authorized depository banks, if the necessity arises. The report from the General Land Office shall include all money for interest, principal and leases of school, university, asylum and other lands. A deposit receipt shall be issued by the Comptroller for the daily total of such remittances from each Department; and the cashier of the Treasurer's Department shall keep a cash book, to be called 'suspense cash book,' in which to enter these deposit receipts, and any others

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issued for cash received for which no deposit warrants can be issued, or when their issuance is delayed. As soon as the status of money so placed with the Treasurer on a deposit receipt is determined it shall be transferred from the suspense account by placing the portion of it belonging to the State in the Treasury by the issuance of a deposit warrant, and the part found not to belong to the State shall be refunded. When deposit warrants are issued, they shall be entered in this cash book, as well as any refunds, and the balance shall represent the aggregate of the items still in suspense. Refunds shall be made in a manner similar to that in present use, except that separate series of warrants shall be used for making such refunds, to be called 'refund warrants,' and such warrants shall be written and signed by the Comptroller and countersigned by the Treasurer and charged against the suspense funds to which they apply. Such warrants shall then be returned to the Comptroller and delivered by him to the person entitled to receive them."

Funds that are placed in the "suspension account" of the State Treasury by state officials acting under Article 4388, supra, can only be drawn out of said account when and in the manner prescribed by said article. That is, as soon as the status of money so placed is determined, when it shall be transferred, if belonging to the State, by deposit in the State Treasury, and if found not to belong to the State, to be refunded. In either case the method is by warrant signed by the Comptroller and countersigned by the State Treasurer. The article is explicit in requiring the transfer to be made as soon as the status of the money is determined and not before. Clearly the word "status" includes every essential fact to its proper disposition, from the viewpoint of the State Treasurer, its then custodian. If it should belong to the State it must be deposited in the Treasury by means of a deposit warrant. If it does not belong to the State it must be refunded by means of a refund warrant. Also see the cases of Daniel, et al vs. Richcreek, et al, 118 SW 2nd, 935; Ex Parte Stephens, 94 SW 327.

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The deposits made under Section 6 of Article 5068-1, supra, is for the protection of the public generally, and such deposits are liable for the payment of all the judgments against the associations, and subject to garnishment after final judgment against the association. The deposits or no part of them belong to the State but are placed in the State Treasury by virtue of Article 5068-1, in trust as a special fund for the purposes set out in said statute.

Article 4374, Vernon's Civil Statutes, reads as follows:

"All moneys received by the Treasurer shall be kept in the safes and vaults of the Treasury; and the Treasurer shall not keep or receive into the building, safes or vaults of the Treasury any money, or the representative of money, belonging to any individual except in cases expressly provided for by law; nor shall said Treasurer appropriate to his own use, or lend, sell or exchange any money, or the representative of money, in his custody or control as such Treasurer."

You are respectfully advised that your first question should be answered in the negative and it is so answered.

You are further advised that such funds shall be deposited in the State Treasury in a special fund for the purposes provided in Section 6 of Article 5068-1, and that such funds shall be kept or remain in the vault of the State Treasury.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

APPROVED DEC 14, 1939

ATTORNEY GENERAL OF TEXAS

Gracie Mann
ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

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